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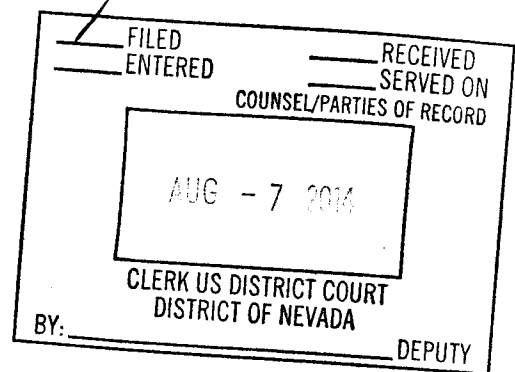
1 DANIEL G. BOGDEN  
United States Attorney  
2 District of Nevada  
3 ROGER W. WENTHE  
Assistant United States Attorneys  
Nevada Bar No. 8920  
4 U.S. Attorney's Office  
333 Las Vegas Boulevard South, Suite 5000  
5 Las Vegas, Nevada 89101  
Ph: 702-388-6336  
6 Fax: 702-388-6787  
Email: [roger.wenthe@usdoj.gov](mailto:roger.wenthe@usdoj.gov)

7  
8 STUART F. DELERY  
Assistant Attorney General  
9 MICHAEL D. GRANSTON  
RENEE BROOKER  
10 JENELLE M. BEAVERS  
KAVITHA J. BABU  
Attorneys, Civil Division  
11 United States Department of Justice  
Post Office Box 261, Ben Franklin Station  
12 Washington, DC 20044  
Tel: (202) 305-3941  
13 Fax: (202) 307-5788  
Email: [jenelle.m.beavers@usdoj.gov](mailto:jenelle.m.beavers@usdoj.gov)  
14 Email: [kavitha.j.babu@usdoj.gov](mailto:kavitha.j.babu@usdoj.gov)

15 Attorneys for the United States.

16 CATHERINE CORTEZ MASTO  
Nevada Attorney General  
17 MARK KEMBERLING  
Chief Deputy Attorney General  
18 Bar No. 5388  
DONNA R. ROHWER  
19 Senior Deputy Attorney General  
Bar No. 11866  
20 555 East Washington Ave., Ste. 3900  
Las Vegas, NV 89101  
21 Telephone: (702) 486-3420  
Fax: (702) 486-3768  
22 Email: [drohwer@ag.nv.gov](mailto:drohwer@ag.nv.gov)  
Email: [mkemberling@ag.nv.gov](mailto:mkemberling@ag.nv.gov)

23 Attorneys for State of Nevada  
24  
25  
26  
27  
28



UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA, *ex rel.*  
JOANNE CRETNEY-TSOSIE,

Plaintiffs,

v.

CREEKSIDE HOSPICE II, LLC, *et al.*,

Defendants.

Case No.: 2:13-cv-167-HDM

UNITED STATES OF AMERICA, *ex rel.*  
VENETA LEPERA,

Plaintiffs,

v.

SKILLED HEALTHCARE, LLC, *et al.*,

Defendants.

Case No.: 2: 13-cv-1283-GMN-PAL

UNITED STATES' AND STATE OF  
NEVADA'S MOTION TO  
CONSOLIDATE ACTIONS  
**AND ORDER**

**UNITED STATES' AND STATE OF NEVADA'S MOTION TO CONSOLIDATE ACTIONS**

The United States and the State of Nevada, pursuant to Fed. R. Civ. P. 42(a)(2), request the Court to consolidate the two actions captioned above and to assign the consolidated action to Judge Howard McKibben. In support of their motion, the United States and Nevada present their attached memorandum of points and authorities.

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1 Dated: August 7, 2014


2  
3 STUART F. DELERY  
Assistant Attorney General

4  
5 DANIEL G. BOGDEN  
United States Attorney

6   
7 ROGER WENTHE  
Assistant United States Attorney

8 JENELLE M. BEAVERS  
9 KAVITHA J. BABU  
Attorneys, Civil Division

10  
11 CATHERINE CORTEZ MASTO  
Nevada Attorney General

12  
13   
14 DONNA R. ROHWER  
Senior Deputy Attorney General

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Defendants.

Case No.: 2: 13-cv-1283-GMN-PAL

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
UNITED STATES' AND STATE OF NEVADA'S MOTION TO CONSOLIDATE ACTIONS**

The United States and Nevada request the Court consolidate these two related actions in order to achieve economy for the Court and the parties during the litigation of the issues of fact and law which the two suits have in common.

**I. ARGUMENT**

**A. The Legal Standard**

Rule 42(a)(2) of the Federal Rules of Civil Procedure provides:

If actions before the court involve a common question of law or fact, the court may . . . (2) consolidate the actions . . . .

District courts have broad discretion to consolidate actions under this rule. *Arteris S.A.S v. Sonics, Inc.*, 2013 WL 3052903 \*7 (N.D.Cal. 2013); *United States ex rel. Martin v. Life Care Centers of America, Inc.*, 912 F.Supp.2d 618, 622 (E.D. Tenn. 2012) (consolidating multiple health-care fraud *qui tam* suits).

**B. The Cases Have Numerous Common Issues of Law and Fact**

Both of the actions we seek to consolidate are brought pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. §§ 3729 *et seq.* The first-filed of the two cases, No. 2:13-cv-167 (the C-T Case), is also brought on behalf of Nevada under the Nevada False Claims Act, NRS §§ 357.010 *et seq.*

In the C-T Case, the relator's Amended Complaint, filed July 12, 2012, asserts that two defendants, Creekside Hospice II, LLC (Creekside) and Skilled Healthcare Group, Inc. (SKG), submitted or caused to be submitted false claims to the United States (Medicare and other programs) and Nevada (Medicaid) by (1) billing for hospice services provided to patients of Creekside Hospice in Las Vegas who were ineligible for hospice because they were not terminally ill (2) failing to conduct face-to-face encounters with patients prior to recertifying them as continuing to be eligible for hospice, as required by the statutes and regulations, (3) failing to have at least 5% of its employee work-hours performed by volunteers, as required by regulations, (4) upcoding physician services by billing for a more expensive service than was actually performed, (5) billing for unspecified "unallowable" services, and (6) failing to timely return overpayments received. The United States and Nevada has intervened in allegations (1), (2), and (4) in the C-T Case and declined to intervene as to all other allegations.

In the second-filed case, No. 2:13-cv-1283 (the Lepera Case), the relator's complaint, filed on May 16, 2013, alleges that Skilled Healthcare, LLC (SKH); Creekside Home Care II, LLC<sup>1</sup>; and Creekside Hospice II, LLC (Creekside, referred to above), submitted or caused to be submitted false claims to the United States by (1) billing for hospice services provided to patients of Creekside Hospice in Las Vegas who were ineligible for hospice because they were not terminally ill, and (2) inducing the submission of false claims related to the solicitation or payment of kickbacks to or from

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<sup>1</sup> This entity was apparently named in error, since it provides only home care services and not hospice services.

1 sources of patient referrals. The United States has intervened only as to allegation (1) in the Lepera  
2 Case and declined to intervene as to all other allegations.

3 The discussion above demonstrates that there is a substantial overlap in the allegations of the  
4 complaints in these two actions. Both allege false claims were submitted for patients of Creekside  
5 Hospice, based on a variety of related types of falsity. The legal basis for the claims in both suits is  
6 the civil False Claims Act and the Nevada False Claims Act, which is substantially similar to the  
7 federal enactment in its substantive provisions. Substantially all of the same witnesses and evidence  
8 will be necessary to resolve the claims as to which the United States and Nevada are intervening in  
9 the two cases. As a result, the Court and the parties will realize significant economies in the  
10 litigation of these two matters if they are consolidated into a single lawsuit. The relators and the  
11 defendants will also benefit by the consolidation for the same reasons, and they will not experience  
12 any additional burden or cost as a result of the consolidation.  
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14 The United States and Nevada request that the Court consolidate these matters before Judge  
15 McKibben, because the C-T Case pending before Judge McKibben is the older of the two cases,  
16 having been originally filed over one year prior to the Lepera Case.  
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1 **II. CONCLUSION**

2 The United States and Nevada therefore request that the Court consolidate these two cases  
3 and assign the consolidated case to Judge Howard McKibben.

4 Dated: August 7, 2014

5 STUART F. DELERY  
6 Assistant Attorney General

7 DANIEL G. BOGDEN  
8 United States Attorney

9   
10 ROGER WENTHE  
11 Assistant United States Attorney

12 JENELLE M. BEAVERS  
13 KAVITHA J. BABU  
14 Attorneys, Civil Division

15 CATHERINE CORTEZ MASTO  
16 Nevada Attorney General

17   
18 DONNA R. ROHWER  
19 Senior Deputy Attorney General

20 **ORDER**

21 **IT IS HEREBY ORDERED** that the Motion to Consolidate Cases (ECF No. 20) is  
22 **GRANTED.**

23 **IT IS FURTHER ORDERED** that civil cases 2:13-cv-01283-GMN-PAL and 2:13-  
24 cv-00167-HDM are hereby consolidated. **Case No. 2:13-cv-00167-HDM** shall hereafter serve  
25 as the base case.

26 **DATED** this 14th day of August, 2014.

27   
28 Gloria M. Navarro, Chief Judge  
United States District Court